FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 587

SAMUEL R. TOUCEY,

Petitioner,

vs.

NEW YORK LIFE INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITIONER'S SUPPLEMENTAL BRIEF.

SAMUEL R. TOUCEY,
Pro se.

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SAMUEL R. TOUCEY,

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NEW YORK LIFE INSURANCE COMPANY,

Respondent.

SUPPLEMENT TO BRIEF IN ARGUMENT BEFORE THE UNITED STATES.

To the Honorable, the Chief Justice, and Associate Justices of the Supreme Court of the United States:

In the conduct of trial and decision rendered, November 23rd, 1936, Federal court failed in its duty.

Respondent's brief served on your petitioner today, page #14, appears last part of Federal court's decision on *disability* issue. Below petitioner quotes first part:

> "He certainly is *totally disabled,* I would think, from carrying on the same kind of business enterprise as that which he was engaged and at which he was very successful. He cannot do that nor anything of that character, etc."

As your petitioner stated in Brief in Argument, page one, fifth paragraph: "*It never was nor never has been a question of your petitioner knowing the correct interpretation of this policy's disability clause. It has always been a question of defendant advising petitioner terms of policy*". *Never an issue petitioner not knowing terms.*

Respondent's brief, page #14, last paragraph, and directly below excerpt quotation from Federal court's decision on *issue of disability,* states:

> "To prove his right to a premium waiver and reinstatement, Toucey had to prove 'FRAUD' and his *total and permanent* disability, etc.".

Your petitioner did prove to the Federal court his "*total and permanent disability for his regular line of work.*" (All required to prove under Missouri State established law.)

Petition in suit in equity charged "FRAUD", year 1934 against this defendant. *Federal court ruled* "NO FRAUD."

An action in equity draws to it all issues, equitable and legal, essential to complete adjudication of the issues between parties. As a concomitant of the rule, it is clearly established that when a court in equity determines the equitable issues adversely to the petitioner, whether for lack of proper averment or lack of proof, that court loses jurisdiction to determine the legal issues. *The leading precedent case is decision by the Supreme Court itself in Dowell* v. *Mitchell,* 105 U. S. 430, 26 L. Ed. 1142.

If the opinion of the Eighth Circuit Court of Appeals in this case is to stand, Section 379, U. S. C. A., Title 28 does not mean what it says, there is no limitation upon the right of a Federal court to stay proceedings in a State court and *that section of the statutes mean nothing, has been repealed, and is a dead letter.*

Federal court, for some reason, refused to decide the issue of "FRAUD" charged in petition in suit in equity, year 1934. Its own rendered decision is proof:

> "Now, I do not intend to pass upon the issue of fact as to whether the plaintiff mailed the letters described in evidence as Exhibits 3 and 4, and whether the defendant received those letters. The testimony of the plaintiff and his secretary was to the effect that the two letters were mailed, and I have no reason to doubt that they were mailed. These witnesses, at least one of them, the plaintiff, was, of course, interested in the results of the case, but I am sure that neither he nor his secretary would swear falsely about a fact of this kind. While I do not make any decision as to that issue, I have no doubt at all that the letters were mailed as the witnesses testified that they were mailed. Whether they were received I do not know."

These two particular letters referred to in Federal court's decision, quoted in excerpt above, also several other letters appear in transcript of record in above case.

Petitioner hopes, therefore, defendant (who again charges petitioner with violation of rule #27 appearing on page #53 respondent's brief) will admit I can talk about these two letters to this Honorable Court. Reference to them below.

The first letter dated June 29th, 1934 (Exhibit #3 in Federal court), appears in full on page #67 petition for writ of certiorari, Supreme Court printed copy.

The second letter dated August 11th, 1934 (Exhibit #4 in Federal court), appears on page #72 petition for writ of certiorari, Supreme Court printed copy.

On letter One (June 29th, 1934) petitioner directs this Honorable Court's attention to origin, history and purpose of this letter starting on page #25, last paragraph, petition

for writ of certiorari-amendment, filed with Supreme Court, November 9th, 1940, and ending page #28, third paragraph.

On-letter Two (August 11th, 1934) petitioner directs Supreme Court's attention to origin, history and purpose of this letter starting third paragraph, page #28, and ending page #33, second paragraph writ of certiorari-amendment filed with Supreme Court November 9th, 1940.

These are the two letters mentioned as Federal court's exhibit #3 and #4 in excerpt of Federal court's decision quoted on this page, paragraph three.

These two letters based petitioner's charge of "FRAUD" in suit in equity filed in Missouri State Court, October, 1935. One year and one month was consumed by defendant to drag this equity suit, charging "FRAUD" year 1934, across the street from Missouri State Court to Federal court for trial.

Equity suit charging "FRAUD" year 1934, went to trial in Federal court, morning November 18th, 1936, and ended at evening November 23rd, 1936, when Federal court rendered decision.

Less than one day was devoted by Federal court to petition in suit in equity, charging "FRAUD", year 1934. Ruled "NO FRAUD".

Over three days was consumed by Federal court to reach and render decision on disability clause in defendant policy No. 8 611 895. Federal court had no legal right to pass on issue.

Federal court has always been your petitioner's best witness, and by written decision, Federal court, for some reason, did not elect to pass on the two letters (June 29th, 1934, and August 11th, 1934). It was the full duty of Federal court in the conduct of trial (November, 1936) to convene a jury, give the jury full testimony and evidence (Exhibits #3 and #4 before Federal court—letters June

29th, 1934 and August 11th, 1934) and let their decision be what it may.

This the Federal court did not do.

This was the Federal court trial on petition of suit in equity, petitioner charging defendant "FRAUD" *year 1934.*

When the Federal court entered temporary injunction stopping Missouri State jury trial on same suit re-filed in Missouri State court (March, 1938) Federal court wrote an opinion. (See page #83 petition for writ of certiorari filed November 9th, 1940, printed copy.)

Federal court, quoted in excerpt, states:

> "Had there been an appeal Circuit Court of Appeals would have heard case de novo.
>
> It might well have disagreed with our finding of fact Number One (*petition in suit of equity,* "FRAUD", *1934*).
>
> And nevertheless affirm[illegible] decree because of finding of fact Number Two (*[illegible]on on disability clause in defendant policy No. [illegible]895*)."

On transcript of record in this case, petition of defendant, page #17, Supreme Court of the United States printed copy, end of page #17, defendant states:

> "On September 26th, 1934, said policy No. 8 611 895 was reduced as aforesaid, that thereafter and on October 2nd, 1934, the last day of grace in which, and, by the terms of said policy plaintiff was entitled to pay the premium thereon falling due on said October 2nd, plaintiff Toucey delivered to defendant his check for Two Hundred Eighty Nine and 25/100 ($289.25) which was deposited by defendant in bank and was thereafter returned to defendant by the bank not honored, and that thereupon said policy lapsed for failure to pay said premium due October 2nd, 1934; that on November 21, 1934, defendant sent said Toucey a letter enclosing said check and notified said Toucey that because said check

had been returned by the bank not honored said policy had lapsed on the books of the company; that plaintiff never paid said premium and never reinstated said policy, etc."

It is all very well for defendant to charge petitioner with violation of Rule #27 and other rules and regulations of the Federal judiciary in what facts petitioner can state to this Honorable Court.

This Honorable Court can change Federal judiciary rules and regulations at will.

This Honorable Court, however, cannot change the Constitution of the United States at will, nor by decision.

The Federal court of November, 1936, did change the Constitution, and by decision, in the conduct of trial and decision rendered. Again the Federal court of 1936, for a second time in this case, changed the Constitution of the United States and laws thereunder and by decision when it entered Federal court temporary injunction (March, 1938) stopping Missouri State court jury trial of the same suit in equity before this Federal court for trial, 1936, charging "FRAUD" year 1934.

The Circuit Court of Appeals in decision rendered February 24th, 1939, concurred with Federal court, first by trial and decision on petition in suit for equity, charging "FRAUD," year 1934, Federal court could change the Constitution of the United States and Supreme Court law thereunder; and again Federal court could change the Constitution of the United States by entering Federal court temporary injunction stopping Missouri State Court jury trial of same 1935 suit in equity, charging "FRAUD," year 1934, on March, 1938, also Supreme Court law thereunder.

Both the Federal Court and the Circuit Court of Appeals Eighth Circuit disregarded Section 379, Title 28, U. S. C. A., Section 265, Judicial Code and flagrantly so.

All Federal court decisions, injunctions, court's final decree is definite proof of this.

The one decision rendered by Circuit Court of Appeals Eighth Circuit, is definite proof of this.

Not a single one controlling precedent case is cited by either Federal judiciary court in their decisions justifying their findings by decision.

BOTH FEDERAL JUDICIARY COURTS ABOVE MENTIONED SAY, AND BY DECISION, THAT—

> *Section 379-265 do not mean what they say, that there is no limitation on the right of a Federal court to stay proceedings in a State court and that these sections of the statutes mean nothing, have been repealed and are a dead letter.*

Your Petitioner Also Says Here Add the Constitution.

It is for this reason, rule #27 or all Rules regardless, when your petitioner prayed the Supreme Court of the United States to grant permission, by application for writ of certiorari, to put before this Honorable Court what this litigation since October, 1935, was all about.

In one such petition petitioner said to the Supreme Court, quoted the form executed by the Bank acknowledging that on November 2nd, 1934, petitioner instructed the Bank not to honor his check drawn in favor of defendant November 2nd, 1934, amount $289.25, if presented for payment.

That the defendant run this check through the bank on four different dates, the bank declined payment on each date and notified your petitioner finally in writing his order to stop payment on check had been complied with and asking your petitioner if he cared to renew "stop payment order" on this check.

Let your petitioner here refer this Honorable Court again to Federal court's decision, quoted in excerpt, third paragraph, page three of this supplemental brief in argument.

Federal Court Exhibit #4 referred to is petitioner's letter to this defendant's Home Office dated August 11th, 1934, and enclosing defendant letters to petitioner from its Kansas City Branch Office dated July 25th, 1934, (See page #68 and #69, printed copy of writ of certiorari-amendment) and also enclosing defendant's Kansas City Branch office letter to petitioner dated August 10th, 1934, (See page #70 and #71, printed copy writ of certiorari-amendment).

Your petitioner stop payment to his check rendered to this defendant November 2nd, 1934, under protest and only given to defendant on an urgent plea to give it, that check would be held in cash drawer until the defendant New York City Office replied to petitioner to his letter to them dated August 11th, 1934, which the defendant signer of defendant letters to your petitioner dated July 25th, 1934, and August 10th, 1934, knew had been sent by petitioner, and on his request, to the defendant New York City office on August 11th, 1934, with petitioner's request that the errors between the defendant letters to petitioner dated July 25th, 1934, and August 10th, 1934, be adjusted. This defendant's Kansas City office knew that when petitioner paid on August 14th, 1934, premium due under protest on policy No. 8 611 895, petitioner would not, when another premium fell due, pay it until the defendant adjusted the errors between these two letters here mentioned.

In fact defendant signer of these two letters took from petitioner manifold carbon of petitioner's letter to defendant's Home Office dated August 11th, 1934, (Exhibit #4 in Federal court) and read the same, handing it back to petitioner, and on August 14th, 1934, petitioner entered defendant's Kansas City office and paid premium on policy No. 8 611 895, under protest, demanded by defendant's letter to

petitioner dated August 10th, 1934, (See page #70 and #71, printed copy writ of certiorari-amendment).

Defendant's quotation from Transcript of record in this case, page #17, end of page, quoted in excerpt middle of page #3 of this supplemental brief in argument is all "bunk" if this Honorable Court will excuse railroad and army common vernacular. Defendant purposely avoids stating their letter to petitioner was sent Registered mail; and law requires it be sent Registered mail.

The Post Office card was evidence in Federal court trial and petitioner did not sign for this registered letter, first sent to a wrong address and deliberately so by defendant, as on September 7th, 1934, the Cashier of defendant who mailed this registered letter to petitioner late in November, 1934, wrote the petitioner at his correct address, and wrote petitioner also in connection with the petitioner's letter to the defendant's Home Office at New York City's address dated August 11th, 1934, mentioned as Exhibit #4 in Federal court's decision quoted in excerpt page two of this supplemental brief, and which appears in full on page #72 of printed copy of writ of certiorari-amendment.

All the foregoing was testified to by petitioner in Federal court trial.

Tersely all the Circuit Court of Appeals Eighth Circuit decision rendered February 24th, 1939, says is this—In phraseology of petitioner.

"Mr. Toucey could not get back in court as no "FRAUD" had been proven; but Mr. Toucey could get back in Court on issue of *Disability*. Because the federal judiciary operates to protect this honest defendant Mr. Toucey's Missouri State court suit in law cannot be permitted: That Mr. Toucey "has ingeniously made out on the face of a petition in the state court by simply omitting the facts as they were established between the parties in the federal equity suit on the issue of *Disability* with the sole purpose of getting back

in court and "frame" this honest defendant on an issue of "FRAUD."

Federal court decision was not appealed, nor was it before the Circuit Court of Appeals Eighth Circuit on appeal.

Federal Court temporary injunction (March, 1938) permanent injunction and court's final decree (August 14th, 1939) were before the Circuit Court of Appeals Eighth Circuit on appeal.

Federal Court never had a legal right under the Constitution and laws thereunder to enter injunctions thus on appeal, nor did the Circuit Court of Appeals Eighth Circuit ever have a legal right to concur with Federal court on appeals before it. I will not requote here the Supreme Court of the United States law plainly saying so. It appears on page #4 this supplemental brief in argument.

Respondent's Brief of #54 pages is very nicely prepared and served on petitioner today. Petitioner likewise will serve copy of this supplemental brief in argument on defendant today.

Respondent's brief is very interesting and the history it contains on Federal judiciary deliberations fascinating, also educational.

However, defendant's previous "Brief of Respondent in opposition to writ of certiorari" petitioner is charged "with not conforming to Rule #38 of the Revised Rules of this Court adopted February 13th, 1938. But, on page #5 of this brief defendant states that the only part of petitioner's typewritten petition for writ of certiorari copied the petition (compiled by my then lawyer) in cause #897 with which the Supreme Court of the United States would not let petitioner in "under the tent". It is plain your petitioner's typewritten petition in writ of certiorari filed November 9th, 1940, should result in petitioner being thrown out the back door this time, while he went out the front door last time. In other words, petitioner had a good lawyer

when before this Honorable Court with cause #897 who had done all he could for petitioner, but as petitioner was wrong, the framers of the Constitution had petitioner in mind when framing the Constitution, petitioner was "through" and did not know it.

The only thing wrong with petitioner today seems to be petitioner lost his lawyer. Defendant is handicapped and does not understand petitioner's phraseologies or expressions.

Apparently the defendant directorate held the same view, believed that if petitioner accepted their invitation "to go back to court" he would get thrown out for not knowing legal expressions. Defendant must have entertained some fear, however, as the preparation of their colossal number of petitions and briefs prove when petitioner did again appear in court December, 1938.

Defendant states on page #15 of respondent's brief today:

> "The reasoning of the Eighth Circuit Court on this point is unanswerable. Judge Woodrough said, etc."

Petitioner answers Judge Woodrough's decision on page #4 of this supplemental brief in argument to best of his ability, and hopes politely and in a dignified legal manner. Also on page #5.

From the historic treaties on the use of writ of injunction so ably prepared by defendant, page #17 respondent's brief petitioner acknowledges here, it seems someone concludes in Henry VIII's time of England, Cardinal Wolsey was impeached due to his mishandling.

Petitioner has always believed Cardinal Wolsey opposed who was to be King Henry's second Queen and a "woman's scorn" when in full glory of her power as Queen decided to behead Cardinal Wolsey. The Cardinal died, however, and the Queen herself later was beheaded.